IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

S.C. SUIT NO.3106 OF 1986

M/s. Himachal Pradesh Horticultural Produce
Marketing and Processing Corporation Ltd.
a Government Undertaking having its
Administrative & Marketing office at
Crawford (M.J.P.) Market,
Wholesale Engg. Section,
Bombay - 400 001.
..Plaintiffs.

Vs.

M/s. R.R. Kheraj
of R.K. Estate,
carrying on business at 7/7A,
M.G.Road, Mulund,
Bombay 400 080.
..Defendants.

Mr. P.N. Singh i/by Vyas & Bhalwal for the Plaintiffs.

None for the Defendants.

CORAM: A.S. OKA, J.
DATE : SEPTEMBER 4, 2007

ORAL JUDGMENT :

1. The suit is filed by the plaintiffs for recovery of a sum of Rs.56,256/- with interest at the rate of 18% per annum on the sum of Rs.36,531/- from the date of the suit till payment or realization.

2. According to the case of the plaintiffs, they are wholesale dealers in apples and other fruits as well as vegetables. They are having their place of business at Crawfort (M.J.P.) market Wholesale Section at Bombay. Between 26th September, 1978 to 27th November,1978, the

plaintiffs from time to time sold, supplied and delivered to the defendants as per the orders placed by the defendants, diverse quantities of apples. Various invoices were submitted by the plaintiffs to the defendants having aggregate value of Rs.79,785/-. According to the case of the plaintiffs, total amount of Rs.41,854/- was paid by the defendants leaving a balance of Rs.36,531/-.

3. A Notice dated 31st October,1980 was issued by the Advocate for the plaintiffs to the defendants recording the aforesaid facts and calling upon the defendants to pay the outstanding amount. It is the case of the plaintiffs that no reply was sent to the said notice. On 19th July,1982, last payment for the sum of Rs.400/- was made by the defendants to the plaintiffs. It is stated that the defendants agreed to pay the balance amount by equal monthly instalments of Rs.1000/-. As the defendants failed to pay the instalments, another notice dated 11th July, 1985 was issued by the Advocate for the plaintiffs to the defendants. According to the case of the plaintiffs, said notice was received but was not replied. Therefore, the present suit has been filed by the plaintiffs.

4. The defendants have filed written statement and contested the claim. Though the defendants denied that

the plaintiffs sold the goods worth of Rs.79,785/-, the defendants have come with the case that the substantial part of the goods supplied by the plaintiffs were in deteriorated condition and had to be sold at a throw away price. It is contended that the defendants have made the payment of Rs.41,.854/- in full and final settlement of the bills submitted by the plaintiffs. Therefore, the defendants prayed for dismissal of the suit.

5. On 24th February,2006 following issues were framed.

1. Whether the plaintiffs prove that a sum of Rs.56,256/- is due and payable by the defendants to the plaintiffs with interest @ 18% p.a. as per Statement of Account being Exh."A" and Particulars of Claim being Exh."G" to the plaint?

2. Whether the defendants prove that the plaintiffs have supplied goods which were in deteriorated condition?

3. Whether the defendants prove that the suit is barred by Law of Limitation?

4. What order and reliefs?

6. The plaintiffs have led evidence of Shri.Dilip Kumar Kaushal, Regional Manager of the plaintiffs. He has filed an affidavit in lieu of examination-in-chief. The formal examination-in-chief of the said witness was recorded in the court in the morning session. None appeared for the defendants and therefore, the suit ordered to be kept back. When the suit was called out in the afternoon session, none appeared for the defendants. Hence, the evidence of the defendants was ordered to be closed. I have heard the counsel appearing for the plaintiffs.

7. The witness Shri. Dilip Kumar Kaushal has stated in his evidence that the total amount of Rs.79,785/- is payable by the defendants to the plaintiffs on account of goods sold, supplied and delivered by them to the defendants. The witness has referred to Statement of Account which is produced alongwith the list of documents (marked as "Y"). The said document is the certified copy of the Statement of Account of the defendants maintained by the plaintiffs. The said Statement of Account contains particulars such as Bill No., Date of the bill and the Amount payable under the bill. The certified extract also discloses the amounts received from the defendants from time to time.

8. It is stated in the evidence of witness Dilip Kumar Kaushal that the Office copy of the notice dated 31st October,1980 and 11th July, 1986 have been misplaced in the office of the plaintiffs and therefore permission is sought to lead secondary evidence by producing true typed copies thereof. In view of the unchallenged version of the witness, permission deserves to be granted to lead secondary evidence of notice dated 31st October, 1980 and 11th July, 1985 produced by the plaintiffs.

9. The Statement of Account marked as Exh."A" in the list of documents (marked as "Y") has been duly proved by the plaintiffs by leading evidence of the aforesaid witness. The said Statement of Account shows that out of the total amount of Rs.79,786 payable by the defendants, a sum of Rs.43,254/- has been received by the plaintiffs from the defendants leaving balance of Rs.36,531/-. Considering the unchallenged evidence of Shri.Dilip Kumar Kaushal and the aforesaid documents, the plaintiffs have established their entitlement to receive a sum of Rs.36,531/- from the defendants. The plaintiffs have claimed interest on the said amount at the rate of 18% per annum till the date of institution of the suit as Rs.19,725/-. Thus, total claim of the plaintiffs is Rs.56,256/-. There is a prayer for grant of further interest at the rate of 18% per annum. As

stated earlier, the plaintiffs have established their entitlement to receive a sum of Rs.36.531/- from the defendants. The plaintiffs are also entitled to receive further interest on the said amount from the date of the institution of the suit. However, considering the facts of the case, further interest is awarded at the rate of 8% per annum from the date of institution of the suit till realization.

10. In view of the aforesaid discussion, Issue No.1 will have to be answered in favour of the plaintiffs with modification that further interest will be at the rate of 8% per annum.

11. So far as Issue No.2 is concerned, burden was on the defendant to show that apples supplied by the plaintiffs were in deteriorated condition. However, the defendants have neither cross examined the plaintiffs' witness nor have led evidence. Therefore, the said issue will have to be answered in the negative.

12. In so far as Issue No.3 is concerned, I have already found that the Statement of Account produced by the plaintiffs has been duly proved. The last payment made by the defendants is Rs.400/- by cheque on 19th July,1982. Therefore, the suit will have to be treated as filed within limitation.

13. Hence, I pass the following order.

ORDER

1. Suit is decreed in terms of prayer clause (a) in so far as the decree for principal amount of Rs.56,256/- is concerned.

2. Apart from decretal amount of Rs.56,256/-, further interest will be payable by the Defendants on sum of Rs.36,531/- at the rate of 8% per annum from the date of institution of the suit till payment or realization.

3. The defendants are ordered and decreed to pay the costs of the suit to the plaintiffs and bear their own.

4. Certified copy is expedited.

(A.S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3106 OF 1986

FULL NAME : Dilipkumar Kaushal.

AGE : 51 years.

OCCUPATION : Service as Regional Manager.

ADDRESS : Type E-6, House No.1/3,
Sector 1,Vashi, Navi Mumbai.

(OATH IS ADMINISTERED TO THE WITNESS IN COURT)

Examination-in-chief by Advocate Shri.P.N.Singh

1. I have filed my affidavit in lieu of evidence. (Affidavit is taken on record and marked "X" for identification). I say that the contents of the said affidavit are true and correct. I have also filed four documents alongwith a list. (List is marked as "Y" for identification). The contents of the said documents are true and correct.

(None appears for the defendants. Hence, cross examination of the witness by the defendant is closed.

. Suit was kept till afternoon session with a view to give an opportunity to the defendant to appear. None appears for the defendant when the suit is called out in

the afternoon session. The counsel for the plaintiffs had made a statement in the morning session that the plaintiffs do not want to examine any further witness. As none appears for the defendant, evidence of the plaintiffs' witness is closed).

Date : 4th September,2007 **(A.S. OKA, J.)**